



September 16, 2014

Fulbright & Jaworski LLP
666 Fifth Avenue, 31st Floor
New York, New York 10103-3198
United States

Joseph P. Zammit
Of Counsel
Direct line +1 212 318 3346
joseph.zammit@nortonrosefulbright.com

Tel +1 212 318 3000
Fax +1 212 318 3400
nortonrosefulbright.com

Via Federal Express

Honorable John Gleeson
c/o Ilene Lee (Case Manager)
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *SmartWater, Ltd. v. Applied DNA Sciences, Inc.*
Case No. 2:12-cv-05731-JG-AKT

Dear Judge Gleeson:

We represent Defendant Applied DNA Sciences, Inc. ("ADNAS") in the referenced action. We write pursuant to Your Honor's direction to the parties, contained in the Minute Entry dated September 12, 2014, to submit their positions with respect to two terms, "affiliate" and "third party," used in the proposed form of Order of Dismissal previously filed with the Court.

I am happy to report that the parties have agreed to modify the proposed Order by providing a definition of "affiliate" and replacing the term "third party" with "any other person or entity." In addition, the parties have agreed to certain other minor revisions to the proposed Order.

There remains only one area of disagreement. Plaintiff SmartWater objects to the inclusion of paragraph 2 of the proposed Order, which provides that the dismissal is without prejudice to ADNAS's pending motion for attorneys' fees.

We attach a hard copy of ADNAS's revised proposed Order, with which SmartWater is in agreement except as to paragraph 2. We will furnish a disk with the proposed Order in Word with the courtesy copy of this letter pursuant to Your Honor's Individual Rules.

Respectfully yours,

A handwritten signature in blue ink that reads "Joseph P. Zammit".

Joseph P. Zammit

JPZ/rgc

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----	X	
	:	
SmartWater, Ltd.,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
-against-	:	CASE NO. 12-cv-05731-JG-AKT
	:	
Applied DNA Sciences, Inc.,	:	
	:	
<i>Defendant.</i>	:	
-----	X	

[PROPOSED] ORDER OF DISMISSAL

Plaintiff SmartWater, Ltd. (“SmartWater”) having moved to dismiss its First Amended Complaint herein with prejudice pursuant to Federal Rule of Civil Procedure Rule 41(a)(2,

IT IS HEREBY ORDERED as follows:

1. The First Amended Complaint (and all claims that were or could have been asserted therein) be and the same hereby is dismissed with prejudice, subject to the further provisions of this Order.

2. The aforesaid dismissal of the First Amended Complaint is without prejudice to the pending motion of defendant Applied DNA Sciences, Inc. (‘ADNAS’) for an award of attorneys’ fees from SmartWater pursuant to 35 U.S.C. § 285, Federal Rule of Civil Procedure 41(a)(2), and/or the inherent power of the Court.

3. SmartWater, and its officers, directors, employees, affiliates, successors and assigns, shall permanently refrain and forebear from instituting or prosecuting any legal action or proceeding or arbitration, in any forum, against ADNAS or any other person or entity (including

but not limited to the U.S. government) for infringement of either or both of the patents-in-suit, to wit, U.S. Patent Nos. 5,605,650 and 5,811,152 (or of any other patent that issues from any application that is a divisional, continuation, continuation-in-part or foreign counterpart of the patents-in-suit) based, in whole or in part, and whether directly or indirectly, on the use, sale, distribution or importation of any product or service manufactured or provided, directly or indirectly, by ADNAS or any affiliate or licensee thereof. For purposes of this paragraph, the term “affiliate” shall mean a person that controls, is controlled by, or is under common control with SmartWater or ADNAS, as the case may be.

4. ADNAS’s counterclaims asserted in this action be, and the same hereby are, dismissed without prejudice in light of the foregoing provisions of this Order.

Dated: September , 2014

Honorable John Gleeson
United States District Judge